

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 03-4263

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

versus

CECIL LYNN KING,

Defendant - Appellant.

Appeal from the United States District Court for the District of South Carolina, at Charleston. David C. Norton, District Judge. (CR-02-636)

Submitted: September 26, 2003

Decided: October 7, 2003

Before KING and SHEDD, Circuit Judges, and HAMILTON, Senior Circuit Judge.

Affirmed by unpublished per curiam opinion.

Dale L. DuTremble, DALE L. DUTREMBLE, L.L.C., Charleston, South Carolina, for Appellant. Lee Ellis Berlinsky, OFFICE OF THE UNITED STATES ATTORNEY, Charleston, South Carolina, for Appellee.

Unpublished opinions are not binding precedent in this circuit. See Local Rule 36(c).

PER CURIAM:

Cecil Lynn King appeals the district court's order sentencing him to 120 months' imprisonment following his guilty plea to conspiracy to distribute cocaine in violation of 21 U.S.C. § 846 (2000). In his appellate brief, filed pursuant to Anders v. California, 386 U.S. 738 (1967), King's counsel asserts the district court erred by declining to depart below the applicable mandatory minimum sentence. King was advised of his right to file a pro se supplemental brief but failed to do so. We affirm.

The denial of a request for downward departure is reviewable only when the district court mistakenly believed that it lacked the authority to depart. United States v. Underwood, 970 F.2d 1336, 1338 (4th Cir. 1992) (citing United States v. Bayerle, 898 F.2d 28 (4th Cir. 1990)). Because the record discloses that the district court was aware of its authority to depart, we may not review the district court's denial of King's sentencing motion. To the extent that King attacks the Government's refusal to move for a downward departure due to King's substantial assistance, the Government's decision is not reviewable but for exceptional circumstances not present here. See United States v. Maddox, 48 F.3d 791, 795 (4th Cir. 1995).

We have reviewed the entire record on appeal as required by Anders and find no meritorious issues for appeal. Accordingly, we affirm King's conviction and sentence. This court requires that

counsel inform his client, in writing, of his right to petition the Supreme Court of the United States for further review. If the client requests that a petition be filed, but counsel believes that such a petition would be frivolous, then counsel may move in this court for leave to withdraw from representation. Counsel's motion must state that a copy thereof was served on the client. We dispense with oral argument because the facts and legal contentions are adequately presented in the materials before the court and argument would not aid the decisional process.

AFFIRMED